

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chap. VII

Request for burden reduction recommendation; rules relating to Agency Programs, Capital, and Corporate Credit Unions; Economic Growth and Regulatory Paperwork Reduction Act of 1996 review

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The NCUA Board is continuing its review of its regulations to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on federally-insured credit unions pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). NCUA requests comments and suggestions on ways to reduce burden in regulations that govern agency programs,

capital and corporate credit unions, consistent with our statutory obligations. All comments are welcome. This is the final notice in the ten-year regulatory review required by EGRPRA.

NCUA will analyze the comments received and propose burden reducing changes to its regulations where appropriate. Some suggestions for burden reduction might require legislative changes. Where legislative changes would be required, NCUA will consider the suggestions in recommending appropriate changes to Congress.

DATES: Comments must be received on or before March 22, 2006.

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Sixth EGRPRA Notice” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

Public inspection: All public comments are available on the agency's website at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [OGC_Mail @ncua.gov](mailto:OGC_Mail@ncua.gov).

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6562.

SUPPLEMENTARY INFORMATION:

I. Introduction.

NCUA seeks public comment and suggestions on ways it can reduce regulatory burdens consistent with our statutory obligations. This notice requests comments to help identify which requirements in three regulatory categories – Agency Programs, Capital, and Corporate Credit Unions – are outdated, unnecessary, or unduly burdensome. The rules in these categories are listed in a chart at the end of this notice. The EGRPRA review supplements and complements the reviews of regulations that NCUA conducts under other laws and its internal policies.

NCUA specifically invites comment on the following issues: whether statutory changes are needed; whether the regulations contain requirements that are not needed to serve the purposes of the statutes they implement; the extent to which the regulations may adversely affect competition; the cost of compliance associated with reporting, recordkeeping, and disclosure requirements, particularly on small credit unions; whether any regulatory requirements are inconsistent or redundant; and whether any regulations are unclear.

Commenters should note that NCUA has recommended that Congress consider amending provisions of the Federal Credit Union Act governing capital requirements for federally insured credit unions. Congress last amended the law in 1998 to impose certain “prompt corrective action” requirements for credit unions, based on their capital ratios. The proposed amendments would make credit union capital standards more comparable with other federally insured financial institutions and would provide greater enforcement flexibility to NCUA. More information about the proposed legislation is available at the NCUA website, www.ncua.gov, under the heading of “Legislation” in the left hand menu on the home page.

In drafting this notice, the NCUA participated in the EGRPRA planning process with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (Agencies). Because of the unique circumstances of federally-insured credit unions and their members, NCUA is issuing a separate notice from the Agencies, which are issuing a joint notice. NCUA’s notice is consistent and comparable with the joint notice,

although there are differences. For example, credit unions are not covered under the Community Reinvestment Act, and so this notice makes no reference to that subject. Similarly, the Agencies have no category similar to NCUA's corporate credit union category, so their notice does not include that subject.

II. A. The EGRPRA review requirements and NCUA's proposed plan.

This is the sixth and final notice in the multi-year regulatory review required by section 2222 of EGRPRA.¹ NCUA described the review requirements in its initial Federal Register notice, published on July 3, 2003 (68 FR 39863). As noted at that time, NCUA anticipates that the EGRPRA review's overall focus on the "forest" of regulations will offer a new perspective in identifying opportunities to reduce regulatory burden. Nevertheless, NCUA's efforts to reduce regulatory burden must be consistent with applicable statutory mandates and provide for the continued safety and soundness of federally-insured credit unions and appropriate consumer protections.

The EGRPRA review required that NCUA categorize its regulations by type. Our July 3, 2003, Federal Register publication identified ten broad categories for our regulations.

The categories are:

1. Applications and Reporting
2. Powers and Activities
3. Agency Programs
4. Capital
5. Consumer Protection

¹ Pub. Law No. 104-208, div. A, title II, §2222, 110 Stat. 3009-414; codified at 12 U.S.C. 3311.

6. Corporate Credit Unions
7. Directors, Officers and Employees
8. Money Laundering
9. Rules of Procedure
10. Safety and Soundness

To spread the work of commenting on and reviewing the categories of rules over a reasonable period of time, NCUA proposed to publish one or more categories of rules approximately every six months between 2003 and 2006 and provide a 90-day comment period for each publication. NCUA asked for comment on all aspects of our plan, including: the categories, the rules in each category, and the order in which we should review the categories. Because NCUA was eager to begin reducing unnecessary burden where appropriate, the initial notice also published the first two categories of rules for comment (Applications and Reporting and Powers and Activities). NCUA published its second notice, soliciting comment on consumer protection rules in the lending area, on February 4, 2004 (69 FR 5300); its third notice, relating to other consumer protection rules, on July 8, 2004 (69 FR 41202); its fourth notice, relating to safety and soundness and anti-money laundering, on February 4, 2005 (70 FR 5946); and its fifth notice, relating to directors, officers and employees and rules of procedure, on July 7, 2005 (70 FR 39202). All covered categories of rules must be published for comment and reviewed by the end of September 2006.

The EGRPRA review then requires the Agencies to: 1) publish a summary of the comments, identifying and discussing the significant issues raised in them; and 2)

eliminate unnecessary regulatory requirements. Within 30 days after the Agencies publish the comment summary and discussion, the Federal Financial Institutions Examination Council (FFIEC), which is an interagency body to which all of the Agencies belong, must submit a report to Congress. This report will summarize significant issues raised by the public comments and the relative merits of those issues. It will also analyze whether the appropriate federal financial institution regulatory agency can address the burdens by regulation, or whether the burdens must be addressed by legislation.

B. Public response and NCUA's current Plan.

NCUA received eight comments in response to its first notice, four comments in response to its second notice, six in response to the third notice, eleven in response to the fourth notice, and five in response to the fifth notice. The comments have been posted on the interagency EGRPRA website, www.EGRPRA.gov, and can be viewed by clicking on “Comments.” NCUA is actively reviewing the comments received about specific ways to reduce regulatory burden, as well as conducting its own analyses. Because the main purpose of this notice is to request comment on the next category of regulations, NCUA will not discuss specific recommendations received in response to earlier notices here. As NCUA develops initiatives to reduce burden on specific subjects in the future – whether through regulatory, legislative, or other channels – it will discuss the public’s recommendations that relate to its proposed actions.

III. Request for comment on Agency Programs, Capital and Corporate Credit Union categories.

NCUA is asking the public to identify the ways in which the rules in the category of Agency Programs, Capital and Corporate Credit Unions may be outdated, unnecessary, or unduly burdensome. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change. NCUA encourages comments that not only deal with individual rules or requirements but also pertain to certain product lines. A product line approach is consistent with EGRPRA's focus on how rules interact, and may be especially helpful in exposing redundant or potentially inconsistent regulatory requirements. NCUA recognizes that commenters using a product line approach may want to make recommendations about rules that are not in the current request for comment. They should do so since the EGRPRA categories are designed to stimulate creative approaches rather than limiting them.

Specific issues to consider. While all comments are welcome, NCUA specifically invites comment on the following issues:

- **Need for statutory change.** Do any of the statutory requirements underlying these regulations impose redundant, conflicting or otherwise unduly burdensome requirements? Are there less burdensome alternatives?
- **Need and purpose of the regulations.** Are the regulations consistent with the purposes of the statutes that they implement? Have circumstances changed so that the regulation is no longer necessary? Do changes in the financial products and services offered to consumers suggest a need to revise certain regulations

or statutes? Do any of the regulations impose compliance burdens not required by the statutes they implement?

- **General approach / flexibility.** Generally, is there a different approach to regulating that NCUA could use that would achieve statutory goals while imposing less burden? Do any of the regulations in this category or the statutes underlying them impose unnecessarily inflexible requirements?
- **Effect of the regulations on competition.** Do any of the regulations in this category or the statutes underlying them create competitive disadvantages for credit unions compared to another part of the financial services industry?
- **Reporting, recordkeeping and disclosure requirements.** Do any of the regulations in this category or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? What, if any, of these requirements could be fulfilled electronically to reduce their burden? Are any of the reporting or recordkeeping requirements unnecessary to demonstrate compliance with the law?
- **Consistency and redundancy.** Do any of the regulations in this category impose inconsistent or redundant regulatory requirements that are not warranted by the purposes of the regulation?

- **Clarity.** Are the regulations in this category drafted in clear and easily understood language?
- **Burden on small insured institutions.** NCUA has a particular interest in minimizing burden on small insured credit unions (those with less than \$10 million in assets). More than half of federally-insured credit unions are small -- having \$10 million in assets or less -- as defined by NCUA in Interpretative Ruling and Policy Statement 03-2, Developing and Reviewing Government Regulations. NCUA solicits comment on how any regulations in this category could be changed to minimize any significant economic impact on a substantial number of small credit unions.

NCUA appreciates the efforts of all interested parties to help us eliminate outdated, unnecessary or unduly burdensome regulatory requirements.

IV. Regulations about which Burden Reduction Recommendations Are Requested Currently.

Agency Programs, Capital, and Corporate Credit Unions

<i>Subject</i>	<i>Code of Federal Regulations (CFR) Citation</i>
Community Development Revolving Loan Program	12 C.F.R. Part 705
Central Liquidity Facility	12 C.F.R. Part 725
Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions	12 C.F.R. §701.34
Prompt Corrective Action	12 C.F.R. Part 702
Adequacy of Reserves	12 C.F.R. §741.3(a)
Corporate Credit Unions	12 C.F.R. Part 704

By the National Credit Union Administration Board on December 15, 2005.

Mary F. Rupp
Secretary of the Board